UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Paragon Systems Inc.
Employer

and **Case 21-RC-262650**

Law Enforcement Officers Security Unions LEOSUCA, LEOS-PBA
Petitioner

and

International Union, Security, Police and Fire Professionals of America, (SPFPA) and its affiliated Local 52
Intervenors

PETITIONER'S OPPOSITION TO REQUEST FOR REVIEW

Pursuant to Section 102.67(f) of the Board's Rules and Regulations, Petitioner Law Enforcement Officers Security Unions LEOSUCA, LEOS-PBA ("LEOS"), by its undersigned counsel, submits this Opposition to the Intervenors' Request for Review.

The Intervenors' Request for Review raises two issues: (1) whether the Regional Director's conclusion that there was no contract bar violates Board policy and (2) whether the Intervenors successfully refuted the presumption that single bargaining units are appropriate. Neither issue warrants granting the Request for Review.

A. THERE IS NO CONTRACT BAR

Despite their assertion that Board policy precludes consideration of "extrinsic evidence" in determining the existence (or non-existence) of a contract bar, the Intervenors' Request for Review, like their presentation at the hearing, is based upon extrinsic evidence.

If, as Intervenors' contend, the Board can consider no "evidence outside of the four corners of the 2019 LOA and the recognition clause of the underlying CBA" [Request at 8], there is no reason to grant the Request. The Recognition Article in the CBA allegedly a bar, defines the bargaining unit as

> all security officers employed by the Company in the counties of San Diego, San Bernardino, Riverside and Imperial, California, who are employed pursuant to Contract No. HSHQW9-13-D-00004 between the Company and the United States Department of Homeland Security, Federal Protective Services ("DHS/FPS") Contract, and its successor(s), excluding temporary personnel as defined in Section 1.4 of this Agreement, Irregular part-time personnel as defined in Section 1.6 of this Agreement, office clericals, managerial personnel, confidential personnel, supervisors as defined by the National Labor Relations Act, and all other personnel.

[Intervenors Exhibit 1 at 3. As the Regional Director concluded, it is undisputed that the AMOC employees covered by the Petition are not "employed pursuant to Contract No. HSHQW9-13-D-00004 between the Company and the United States Department of Homeland Security, Federal Protective Services ('DHS/FPS')." [Request Exhibit 34 at 3-4; *See* Request Exhibit 1 at 54;]

The 2019 LOA did not redefine the bargaining unit. The Intervenors contend that the 2019 LOA somehow amended the 2017 contractual recognition clause because it established a wage rate for employees in Riverside County, where the AMOC employees work. [Request at 9]. But the Intervenors admit that non-AMOC employees also work in Riverside County. [Intervenors' Exhibit 1 at 43]. Intervenors also admit that when processing a grievance filed by AMOC employees because Paragon did not give them the wage increase mandated by the 2019 LOA, Paragon asserted that the 2017 contract as amended did not apply. [Request Exhibit 1 at 47-48]. Finally, the record clear proves that when the parties intended to amend a recognition clause they knew how to do it. [Intervenors' Exhibit 9].

To be clear, the Regional Director concluded that "this fundamental issue, that the text of the 2017-2021 Agreement recognition clause establishes that the agreement does not cover the petitioned-for employees, is alone sufficient to reject Intervenors' contract-bar arguments." [Intervenors' Exhibit 4 at 7].

Thus, if the Intervenors are correct that the Regional Director cannot consider "extrinsic evidence," their Request raises no issue warranting Review. But the record also establishes that the Regional Director did not violate Board policy by considering evidence proffered by the Intervenors. All the evidence the Intervenors fault the Regional Director for considering was introduced by the Intervenor or with the Intervenors' consent.

Given the Intervenors' objection to consideration of extrinsic evidence, it is interesting that pages 2 through 6 of the Request for Review discuss nothing but extrinsic evidence, which are termed "Background concerning the Petitioned-For Unit."

Given the Intervenors' objection to consideration of extrinsic evidence, it is interesting that Intervenors' Exhibits 3-11 are all extrinsic evidence. Intervenors' Exhibit 3, 4, and 5 concern the negotiation of the contract Intervenors were trying to negotiate with Paragon to cover the AMOC employees that Paragon and the Intervenors knew were <u>not</u> covered by the 2017 contract that Intervenors contend barred the Petition. Intervenors' Exhibits 6, 7, 8, and 9 all concern bargaining history.

Given the Intervenors' objection to consideration of extrinsic evidence, it is interesting that the witnesses called by the Intervenor all discussed extrinsic evidence: the years before the negotiation of the current contract and the attempt to negotiate a contract for the orphan AMOC employees covered by the Petition.

Given the Intervenors' objection to consideration of extrinsic evidence, it is interesting that the Intervenors did not object to the Introduction of Employer's Exhibits 1 and 2. [Request Exhibit 1 at 46-47].

The Intervenors' reliance upon *Jet-Pak Corp.*, 231 NLRB 552, 552-553 (1977), is misplaced. There, the Board restated its policy that "the legality of a contract asserted as a bar is to be determined in representation proceedings from the face of the contract itself and that extrinsic evidence will not be admitted in a representation proceeding to establish the unlawful nature of such a contract." Equally without merit is Intervenors' reliance upon *South Mountain Healthcare and Rehabilitation Center*, 344 NLRB 375 n. 3 (2005), where the Board stated that " It is well established that the effective and/or expiration date(s) should be apparent from the face of the contract, without resorting to extrinsic evidence." The instant case does not involve any allegation that the Intervenors' 2017 contract is unlawful or any question concerning its effective dates. The instant case involves only the meaning of the recognition clause.

Simply stated, Board policy should not preclude evidence unequivocally related to the scope of a recognition clause to determine whether the contract covered workers in the Petitioned-for unit. There is no reason to grant the Request for Review.

B. THE INTERVENORS HAVE NOT REBUTTED THE PRESUMPTION ALLOWING SINGLE LOCATION UNITS

Section 9(a) of the Act obligates the Board to determine that a petition seeks an election in a "unit [which is] appropriate for bargaining." 29 U.S.C. §159(a). There is nothing in the Act which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act requires only that the unit be "appropriate," that is, appropriate to insure

to employees in each case "the fullest freedom in exercising the rights guaranteed by this Act." *Morand Bros. Beverage Co.*, 91 NLRB 409, 417–418 (1950), *enf'd* 190 F.2d 576 (7th Cir. 1951). A single location unit is presumptively appropriate. *Hegins Corp.*, 255 NLRB 1236 (1981). The party opposing a single facility unit has the burden of proof.

The AMOC employees were orphaned by the federal government's decision to separate them from a group of Paragon employees under contract to DHS/FPS. Community of interest considerations cannot apply to force employees into a larger, existing unit when they seek independent representation. Until the Petition was filed, the Intervenors were attempting to represent the AMOC employees as a separate unit. Clearly, a unit limited to AMOC employees is acceptable to Paragon, SPFPA, and LEOS. The only issue is the identity of the exclusive bargaining agent.

CONCLUSION

The Board should deny the Request for Review because it does not warrant Board consideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2020, I served the above Post-Hearing Brief by email to Jean Dober, Richard Olszewski, and the Regional Director of Region 21.

/s/ Jonathan Axelrod
Jonathan G. Axelrod